

AMENDED IN ASSEMBLY AUGUST 2, 2010

AMENDED IN ASSEMBLY JUNE 21, 2010

AMENDED IN ASSEMBLY JUNE 7, 2010

AMENDED IN ASSEMBLY JUNE 24, 2009

AMENDED IN SENATE JUNE 1, 2009

AMENDED IN SENATE MAY 20, 2009

AMENDED IN SENATE APRIL 23, 2009

AMENDED IN SENATE APRIL 2, 2009

SENATE BILL

No. 346

Introduced by Senators Kehoe and Simitian

February 25, 2009

An act to add Article 13.5 (commencing with Section 25250.50) to Chapter 6.5 of Division 20 of the Health and Safety Code, relating to hazardous materials.

LEGISLATIVE COUNSEL'S DIGEST

SB 346, as amended, Kehoe. Hazardous materials: motor vehicle brake friction materials.

(1) Existing law establishes the Department of Toxic Substances Control in the California Environmental Protection Agency, with powers and duties regarding the management of hazardous waste. Existing law, administered by the department, prohibits the management of hazardous waste except in accordance with the hazardous waste control laws, including laws governing the removal of any mercury-containing vehicle

light switch from a vehicle, and the regulations adopted by the department. A violation of the hazardous waste control laws is a crime.

The bill, commencing on January 1, 2014, would prohibit the sale of any motor vehicle brake friction materials containing specified constituents in amounts that exceed certain concentrations. The bill, *commencing on January 1, 2021, would prohibit motor vehicle brake friction materials containing more than 5% copper by weight from being sold in California, and, commencing on January 1, 2025, would prohibit motor vehicle brake friction materials exceeding 0.5% copper by weight from being sold in California.* The bill, commencing on January 1, 2014, would require all manufacturers of motor vehicle brake friction materials that are sold in this state to obtain a certification of compliance with these requirements from a 3rd-party testing certification agency, and to mark proof of certification on the friction materials. The bill would require a manufacturer of brake friction materials to file a copy of the 3rd-party certification with the department and to pay a ~~reasonable~~ filing fee. A violation of these provisions would be subject to a civil fine of up to \$10,000 per violation. *The bill would create the Brake Friction Materials Water Pollution Fund in the State Treasury, and would require those fines to be deposited in the fund. The moneys in the fund would be available, upon appropriation in the annual Budget Act, to implement the bill's requirements.* Because a violation of these provisions *also* would ~~also~~ be a crime pursuant to the hazardous waste control laws, the bill would impose a state-mandated local program.

The bill would establish a process by which a manufacturer may apply to the department for an extension of the prohibition against selling motor vehicle brake friction materials containing more than 0.5% copper by weight, including providing for the establishment of an advisory committee to be involved in that process. The bill would require the department to assess a fee for each extension application and would require the Secretary for Environmental Protection to issue a decision regarding the extension.

The bill would exempt specified classes of vehicles and brakes from its requirements, including authorizing a manufacturer, on and after January 1, 2025, to sell replacement brake friction materials that exceed 0.5% copper by weight for a motor vehicle manufactured prior to that date. The bill would establish a process by which any person may petition the department for a withdrawal of that specific exemption for a specific vehicle model, class, platform, or other vehicle-based category. The bill would require the department to assess a fee for each

petition submission and would require the Secretary for Environmental Protection to issue a decision regarding a withdrawal of that exemption.

(2) Existing law requires the department to adopt regulations to establish a process to identify and prioritize chemicals of concern in consumer products. As part of this process, the department is required to adopt regulations for the evaluation of chemicals of concern in consumer products, including a process for evaluating alternatives.

This bill would direct the department to require vehicle brake manufacturers to comply with the regulations for the department's evaluation of chemicals of concern and, before those regulations are adopted, *would require vehicle brake friction materials manufacturers* to ensure that formulations developed to comply with the above content requirements are less harmful to health and the environment.

(3) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 *SECTION 1. The Legislature finds and declares all of the*
- 2 *following:*
- 3 *(a) Friction materials are an essential component of motor*
- 4 *vehicle brake systems and of critical importance to transportation*
- 5 *safety and the public safety in general.*
- 6 *(b) Debris from friction materials containing copper in all of*
- 7 *its forms, including, but not limited to, elemental copper and all*
- 8 *of its alloys and compounds, are generated and released to the*
- 9 *surrounding environment in the course of normal brake system*
- 10 *operation.*
- 11 *(c) Tens of thousands of pounds of copper and other substances*
- 12 *released from brake friction materials enter California's streams,*
- 13 *rivers, and marine environment every year.*
- 14 *(d) Copper is toxic to many aquatic organisms, including*
- 15 *salmon.*
- 16 *(e) Limits on the copper content of brake friction materials are*
- 17 *essential for California cities, counties, and industries to comply*

1 *with federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.)*
2 *mandates, including copper water quality standards and copper*
3 *total maximum daily loads in California's urban watersheds.*

4 *(f) Without limits on the copper content of brake friction*
5 *materials, California taxpayers face billions of dollars in federal*
6 *Clean Water Act compliance costs.*

7 *(g) Changes in the composition of brake friction materials made*
8 *to comply with copper water quality standards and successfully*
9 *implement copper total maximum daily loads in California's urban*
10 *watersheds should meet all applicable safety standards.*

11 *SEC. 2. Article 13.5 (commencing with Section 25250.50) is*
12 *added to Chapter 6.5 of Division 20 of the Health and Safety Code,*
13 *to read:*

14
15 *Article 13.5. Motor Vehicle Brake Friction Materials*

16
17 *25250.50. For purposes of this article, the following definitions*
18 *apply:*

19 *(a) "Advisory committee" means a committee of nine members*
20 *appointed by the secretary to consider and recommend approval*
21 *or denial of an application for an extension of the requirement*
22 *imposed pursuant to subdivision (b) of Section 25250.52 and a*
23 *petition for a withdrawal of an exemption pursuant to subdivision*
24 *(c) of Section 25250.58, which shall be composed as follows:*

25 *(1) (A) One-third of the members shall be representatives of*
26 *the manufacturers of brake friction materials and motor vehicles,*
27 *nominated by the chairman of the board and the director of the*
28 *department.*

29 *(B) If the application pertains solely to brake friction materials*
30 *to be used on heavy-duty motor vehicles, the members shall*
31 *represent the manufacturers of heavy-duty brake friction materials*
32 *and heavy-duty motor vehicles.*

33 *(2) One-third of the members shall be representatives of*
34 *municipal storm water quality agencies and nongovernmental*
35 *environmental organizations, nominated by the chairman of the*
36 *board and the director of the department.*

37 *(3) One-third of the members shall be individuals with*
38 *experience in safety and other relevant technical areas, nominated*
39 *by the members specified in paragraphs (1) and (2). Nominees*
40 *appointed pursuant to this paragraph shall disclose any financial*

1 *interests they may have in any aspect of the vehicle or vehicle parts*
2 *manufacturing industries. Nominations appointed pursuant to this*
3 *paragraph may be vetoed by any of the members specified in*
4 *paragraphs (1) and (2).*

5 *(b) “Board” means the State Water Resources Control Board.*

6 *(c) “Department” means the Department of Toxic Substances*
7 *Control.*

8 *(d) “Heavy-duty motor vehicle” means a motor vehicle of over*
9 *26,000 pounds gross weight.*

10 *(e) “Manufacturer,” except where otherwise specified, means*
11 *both of the following:*

12 *(1) A manufacturer or assembler of motor vehicles or motor*
13 *vehicle equipment.*

14 *(2) An importer of motor vehicles or motor vehicle equipment*
15 *for resale.*

16 *(f) “Motor vehicle” has the same meaning as “vehicle” is*
17 *defined in Section 670 of the Vehicle Code.*

18 *(g) “Testing certification agency” means a third-party testing*
19 *certification agency utilized by the brake friction material*
20 *manufacturing industry for purposes of certifying compliance with*
21 *federal safety standards and whose testing methods to certify*
22 *compliance with this article require that testing be conducted by*
23 *a laboratory accredited pursuant to the Environmental Laboratory*
24 *Accreditation Act (Article 3 (commencing with Section 100825)*
25 *of Chapter 4 of Part 1 of Division 101) using testing methods that*
26 *have been approved by the department.*

27 *25250.52. (a) On and after January 1, 2021, any motor vehicle*
28 *brake friction materials exceeding 5 percent copper by weight*
29 *shall not be sold in this state, except as otherwise provided in this*
30 *article.*

31 *(b) On and after January 1, 2025, any motor vehicle brake*
32 *friction materials exceeding 0.5 percent copper by weight shall*
33 *not be sold in this state, except as otherwise provided in this article.*

34 *(c) All brake friction materials formulated to meet the*
35 *requirements of subdivisions (a) and (b) shall meet applicable*
36 *federal safety standards, or if no federal safety standard exists, a*
37 *widely accepted industry standard.*

38 *(d) Commencing on January 1, 2021, a manufacturer may apply*
39 *to the department for a three-year extension of the January 1,*
40 *2025, deadline established in subdivision (b). An extension shall*

1 *be submitted based on vehicle model, class, platform, or other*
2 *vehicle-based category, and not on the basis of brake friction*
3 *material formulation. Each application shall be accompanied by*
4 *documentation showing that the manufacturer will be unable to*
5 *make brake friction material available for the specific model, class,*
6 *platform, or other vehicle-based category by January 1, 2025, that*
7 *meets federal and industry standards for safety, and by a*
8 *scientifically sound quantitative estimate of the quantity of copper*
9 *that would be emitted if the extension is granted, including a full*
10 *description of the assumptions used in arriving at that estimate.*

11 *(e) No more than 30 days after receipt of an application for an*
12 *extension pursuant to subdivision (d), the department shall do all*
13 *of the following:*

14 *(1) Post a notice of receipt on the department's Internet Web*
15 *site that includes the vehicle model, class, platform, or other*
16 *vehicle-based category, whether the brake friction material is*
17 *intended for use in original equipment or replacement parts, and*
18 *the quantity of copper that would be emitted if the extension is*
19 *granted.*

20 *(2) Consult with the board and the State Air Resources Board.*

21 *(3) Solicit comment from the public and from scientific and*
22 *vehicle engineering experts on the availability of generally*
23 *affordable compliant brake friction materials, their safety and*
24 *performance characteristics, the feasibility of brake pad copper*
25 *emissions reduction through means other than friction material*
26 *reformulation, and the impact of an extension on successful*
27 *compliance with national pollutant discharge Elimination system*
28 *(NPDES) permits, as defined in Section 13399.43 of the Water*
29 *Code, and copper total maximum daily load reduction*
30 *requirements, including the cumulative impact of any extensions*
31 *or exemptions already approved by the secretary.*

32 *(f) In consultation with the board, the department shall*
33 *determine if sufficient documentation has been presented upon*
34 *which to base a decision. If the department determines that further*
35 *documentation is needed, it shall deliver a detailed request for*
36 *further documentation to the applicant. Failure to provide the*
37 *requested information shall result in denial of the extension.*

38 *(g) Upon finding that sufficient documentation has been*
39 *provided by the applicant, the department shall forward the*
40 *application to the advisory committee, which, no sooner than 90*

1 *days after the advisory committee receives the application, shall*
2 *consider whether to recommend that the application for extension*
3 *should be approved.*

4 *(h) The advisory committee shall hold at least one public hearing*
5 *at which it shall accept and consider comments from the public*
6 *on each category of application. The advisory committee meetings*
7 *shall be open to the public and are subject to the Bagley-Keene*
8 *Open Meeting Act (Article 9 (commencing with Section 11120) of*
9 *Chapter 1 of Part 1 of Division 3 of Title 2 of the Government*
10 *Code).*

11 *(i) In considering any application for an extension, the advisory*
12 *committee shall ensure that the motor vehicle brakes meet*
13 *applicable federal safety standards, or if no federal safety standard*
14 *exists, a widely accepted industry standard.*

15 *(j) In considering any application for an extension, the advisory*
16 *committee shall consider all of the following:*

17 *(1) Availability of acceptable alternative existing brake friction*
18 *materials.*

19 *(2) Industry production and testing capacity.*

20 *(3) Technical feasibility of alternative brake friction materials.*

21 *(4) Ability of alternative brake friction materials to meet*
22 *customer performance expectations, including noise, wear,*
23 *vibration, and durability.*

24 *(5) Economic feasibility of the use of any alternative brake*
25 *friction materials, including the cost to the industry and the cost*
26 *to the consumer.*

27 *(6) The impact the application of an extension will have on*
28 *California watersheds.*

29 *(7) If available, any assessment of alternative brake friction*
30 *materials that considered potential multimedia life cycle*
31 *environmental impacts, including materials and resource*
32 *consumption, water quality impacts, air emissions, greenhouse*
33 *gas emissions, waste and end-of-life disposal, public health*
34 *impacts, and ecological impacts.*

35 *(8) The impact of an extension on the successful compliance*
36 *with NPDES permits and copper total maximum daily load*
37 *reduction requirements, including the cumulative impact of any*
38 *extensions or exemptions already approved by the secretary.*

39 *(k) Upon conclusion of its consideration of the application for*
40 *an extension, and no later than nine months after the receipt of*

1 *the application, the advisory committee shall recommend that the*
2 *secretary approve the application for an extension, approve the*
3 *application subject to specified conditions, or not approve the*
4 *application. The recommendation shall be accompanied by*
5 *documentation of the basis for the recommendation.*

6 *(l) The secretary shall make available the recommendation of*
7 *the advisory committee and accompanying documentation for*
8 *public review and comment for 60 days following receipt of the*
9 *recommendation from the advisory committee. The secretary shall*
10 *consider public comments on the advisory committee's*
11 *recommendation and issue a final decision on the application for*
12 *extension no later than 45 days after the conclusion of the 60-day*
13 *comment period.*

14 *(m) Until January 1, 2030, a manufacturer with an approved*
15 *extension may reapply for additional two-year extensions*
16 *according to deadlines that may be established by the department.*
17 *All of the requirements of this section shall be met for an additional*
18 *extension to be granted.*

19 *(n) Only manufacturers of heavy duty vehicle brake friction*
20 *materials may apply to the department for additional two-year*
21 *extensions that would extend beyond January 1, 2032.*

22 *(o) The department shall assess a fee for each application for*
23 *an extension sufficient to cover actual costs incurred in*
24 *implementing this section.*

25 *25250.54. (a) On and after January 1, 2014, any motor vehicle*
26 *brake friction materials containing any of the following constituents*
27 *in an amount that exceeds the following concentrations shall not*
28 *be sold in this state:*

29 *(1) Cadmium and its compounds: 0.01 percent by weight.*

30 *(2) Chromium(VI)-salts: 0.1 percent by weight.*

31 *(3) Lead and its compounds: 0.1 percent by weight.*

32 *(4) Mercury and its compounds: 0.1 percent by weight.*

33 *(5) Asbestiform fibers: 0.1 percent by weight.*

34 *(b) All brake friction materials formulated to meet the*
35 *requirements of subdivision (a) shall meet applicable federal safety*
36 *standards, or if no federal safety standard exists, a widely accepted*
37 *industry standard.*

38 *(c) Motor vehicle manufacturers, and distributors, wholesalers,*
39 *or retailers of replacement brake friction materials may continue*
40 *to offer for sale brake friction materials not certified as compliant*

1 with subdivision (a) solely for the purpose of depletion of
2 inventories until December 31, 2023.

3 25250.56. (a) The department shall require vehicle brake
4 manufacturers to comply with the regulations adopted pursuant
5 to subdivision (a) of Section 25253 in their development of brake
6 friction materials that comply with Sections 25250.52 and
7 25250.54. In the process of complying with the regulations adopted
8 pursuant to subdivision (a) of Section 25253, a manufacturer shall
9 give specific consideration to the cumulative impacts on health
10 and the environment of alternatives that increase the use of nickel,
11 zinc, and antimony.

12 (b) This section does not authorize the department to modify or
13 disregard the requirements in Section 25250.52 or 25250.54.

14 (c) Prior to the enactment of regulations implementing Section
15 25253, a vehicle brake friction material manufacturer shall
16 exercise due diligence to ensure that formulations developed to
17 comply with Sections 25250.52 and 25250.54 are less harmful to
18 health and the environment.

19 25250.58. (a) The following motor vehicle classes and brakes
20 are exempt from this article:

21 (1) Military combat vehicles.

22 (2) Vehicles employing internal closed oil immersed brakes, or
23 a similar brake system that is fully contained and emits no copper,
24 other debris, or fluids under normal operating conditions.

25 (3) Brakes designed for the primary purpose of holding the
26 vehicle stationary and not designed to be used while the vehicle
27 is in motion.

28 (4) Motorcycles.

29 (5) Motor vehicles subject to voluntary or mandatory recalls of
30 brake friction materials or systems due to safety concerns. This
31 exemption shall expire upon the lifting of the recall and provision
32 of new brake friction materials that comply with this article.

33 (6) Motor vehicles manufactured by small volume vehicle
34 manufacturers with less than 5,000 new vehicle annual sales in
35 this state. Annual sales shall be determined based on the average
36 number of new vehicles sold in the state for the previous three
37 years.

38 (b) On and after January 1, 2025, a manufacturer may sell
39 replacement brake friction materials that do not meet the
40 requirements of subdivision (b) of Section 25250.52 for a motor

1 vehicle manufactured prior to January 1, 2025, subject to
2 subdivision (c).

3 (c) (1) On and after January 1, 2021, any person, including,
4 but not limited to, a manufacturer, may petition the department to
5 withdraw the exemption authorized by subdivision (b) for a specific
6 vehicle model, class, platform, or other vehicle-based category.
7 Each petition shall be accompanied by documentation showing
8 that replacement brake friction materials for the specified vehicle
9 model, class, platform, or other vehicle-based category that meet
10 the requirements of subdivision (b) of Section 25250.52, subdivision
11 (a) of Section 25250.54, and Section 25250.56, and applicable
12 federal safety standards, or if no federal safety standard exists, a
13 widely accepted industry standard for safety, are or will be
14 generally affordable and available in sufficient quantity.

15 (2) In consultation with the board, the department shall
16 determine if sufficient documentation has been presented upon
17 which to base a decision. If the department determines that further
18 documentation is needed, it shall deliver a detailed request for
19 further documentation to the petitioner. Failure to provide the
20 requested information shall result in denial of the petition.

21 (3) Once the department finds that sufficient documentation has
22 been provided by the petitioner, it shall forward the petition to the
23 advisory committee, which shall consider whether to recommend
24 that the petition should be approved.

25 (4) The advisory committee shall hold at least one public hearing
26 at which it shall accept and consider comments from the public.
27 The advisory committee meetings shall be open to the public and
28 are subject to the Bagley-Keene Open Meeting Act (Article 9
29 (commencing with Section 11120) of Chapter 1 of Part 1 of
30 Division 3 of Title 2 of the Government Code).

31 (5) In considering any petition for withdrawal of an exemption,
32 the advisory committee shall ensure that the alternative brake
33 friction materials meet the requirements of subdivision (b) of
34 Section 25250.52, subdivision (a) of Section 25250.54, Section
35 25250.56, and applicable federal safety standards, or if no federal
36 safety standard exists, a widely accepted industry standard for
37 safety.

38 (6) In considering any petition for withdrawal of an exemption,
39 the advisory committee shall consider all of the following:

40 (A) Availability of the alternative brake friction materials.

1 (B) Technical feasibility of the alternative brake friction
2 materials.

3 (C) Ability of the alternative brake friction materials to meet
4 customer performance expectations, including noise, wear,
5 vibration, and durability.

6 (D) Whether the alternative brake friction materials are or will
7 be available at a cost comparable to that of existing noncompliant
8 brake friction materials.

9 (E) Benefit that the withdrawal of the exemption will have on
10 California watersheds.

11 (F) Benefit that the withdrawal of the exemption will provide
12 to successful compliance with national pollutant discharge
13 elimination system (NPDES) permits and copper total maximum
14 daily load reduction requirements.

15 (7) Upon conclusion of its consideration of the petition for
16 withdrawal of an exemption, and no later than nine months after
17 the receipt of the petition, the advisory committee shall recommend
18 that the secretary approve the petition, approve the petition subject
19 to specified conditions, or not approve the petition. The
20 recommendation shall be accompanied by documentation of the
21 basis for the recommendation.

22 (8) The secretary shall make available the recommendation of
23 the advisory committee and accompanying documentation for
24 public review and comment for 60 days following receipt of the
25 recommendations from the advisory committee. The secretary shall
26 consider public comments on the advisory committee's
27 recommendation and issue a final decision on the petition for
28 withdrawal of an exemption no later than 45 days after the
29 conclusion of the 60-day comment period.

30 (9) The department shall assess a fee upon submission of each
31 petition for withdrawal of an exemption sufficient to cover actual
32 costs incurred in implementing this section.

33 (10) Upon the issuance by the secretary of a final decision
34 approving a petition for withdrawal of an exemption,
35 manufacturers, wholesalers, retailers, and distributors may
36 continue to sell existing stocks of noncompliant replacement brake
37 friction materials solely for the purpose of inventory depletion for
38 one year after the date of the final decision or, if the final decision
39 is issued prior to January 1, 2024, until January 1, 2025.

1 25250.60. (a) *The department shall consult with the brake*
2 *friction material manufacturing industry in the development of all*
3 *criteria for testing and certification procedures for brake friction*
4 *materials required by this article.*

5 (b) *Commencing on January 1, 2014, all manufacturers of*
6 *friction materials used in brakes on new motor vehicles, or as*
7 *replacement parts, that are sold in this state shall obtain*
8 *certification that each of their formulations for brake friction*
9 *materials complies with Section 25250.54 from a testing*
10 *certification agency. A certification shall be valid for no more than*
11 *three years. Manufacturers shall mark proof of certification on*
12 *all brake friction materials. The mark of proof of certification on*
13 *brake friction materials shall be easily applied, easily legible, and*
14 *shall not impose unreasonable additional costs on manufacturers*
15 *due to the use of additional equipment or other factors.*

16 (c) *Commencing on January 1, 2021, all manufacturers of*
17 *friction materials used in brakes on new motor vehicles, or as*
18 *replacement parts, that are sold in this state shall obtain*
19 *certification that each of their formulations for brake friction*
20 *materials complies with subdivision (a) of Section 25250.52 and*
21 *Section 25250.54 from a testing certification agency. A certification*
22 *shall be valid for no more than three years. Manufacturers shall*
23 *mark proof of certification on all brake friction materials. The*
24 *mark of proof of certification on brake friction materials shall be*
25 *easily applied, easily legible, and shall not impose unreasonable*
26 *additional costs on manufacturers due to the use of additional*
27 *equipment or other factors.*

28 (d) *Commencing on January 1, 2025, all manufacturers of*
29 *friction materials used in brakes on new motor vehicles, or as*
30 *replacement parts, that are sold in this state shall obtain*
31 *certification that each of their formulations for brake friction*
32 *materials complies with subdivision (b) of Section 25250.52 and*
33 *Section 25250.54 from a testing certification agency. A certification*
34 *shall be valid for no more than three years. Manufacturers shall*
35 *mark proof of certification on all brake friction materials. The*
36 *mark of proof of certification on brake friction materials shall be*
37 *easily applied, easily legible, and shall not impose unreasonable*
38 *additional costs on manufacturers due to the use of additional*
39 *equipment or other factors.*

1 (e) Prior to its products being sold in this state, a manufacturer
2 shall file a copy of the certification of each of its brake friction
3 materials formulations with the department. The department shall
4 charge a filing fee upon the filing of a copy sufficient to cover the
5 actual costs incurred in implementing this section.

6 (f) Manufacturers may obtain certification of compliance with
7 the requirements of Section 25250.52 or 25250.54 at any time
8 prior to the dates specified in those sections.

9 (g) The department, in consultation with all interested parties,
10 and on or before January 1, 2012, shall develop all certification
11 and marking criteria required pursuant to this section.

12 (h) Commencing on January 1, 2014, vehicle manufacturers
13 and retailers of friction materials shall ensure that only brakes
14 certified for sale in this state are offered for sale in this state.

15 (i) Certification and mark of proof shall show consistent date
16 format, designations, and labeling to facilitate acceptance in all
17 50 states and United States territories for the purposes of
18 compliance.

19 25250.62. (a) A violation of this article, including, but not
20 limited to, offering brake friction materials for sale without first
21 complying with subdivision (c) of Section 25250.60 or the
22 falsification of certification, by vehicle manufacturers, brake
23 friction materials manufacturers, distributors, or retailers, shall
24 be subject to a civil fine of up to ten thousand dollars (\$10,000)
25 per violation.

26 (b) The department shall enforce this article. The department
27 shall remove from sale in this state any replacement brake friction
28 materials determined to be not in compliance with this article.

29 (c) If the department determines that a distributor, wholesaler,
30 or retailer of replacement brake friction material has been offering
31 noncompliant brake friction material for sale in California, it shall
32 allow the distributor, wholesaler, or retailer of replacement brake
33 friction material to establish that it obtained the noncompliant
34 brake friction material in good faith and after exercising due
35 diligence in verifying that the material complied with this article
36 prior to assessing fines and penalties pursuant to subdivision (a).

37 (d) In determining the amount of the civil fine to be assessed
38 for a violation of this article, the department shall consider the
39 particular circumstances of the violation, including, but not limited

1 *to, the amount of noncompliant brake friction material offered for*
2 *sale in California and whether previous violations have occurred.*

3 *(e) The department may waive the imposition of a fine and issue*
4 *a letter of warning if it determines, based on criteria, including,*
5 *but not limited to, the amount of brake friction material offered*
6 *for sale, the presence or absence of prior violations, and whether*
7 *due diligence was exercised in determining that the brake friction*
8 *material offered for sale complied with this article, that the*
9 *violation of this article does not merit the imposition of a fine.*

10 *(f) Any distributor, wholesaler, or retailer found by the*
11 *department to have offered for sale noncompliant replacement*
12 *brake material shall cooperate with the department in the removal*
13 *of the noncompliant brake friction material from sale, inform the*
14 *department of measures being implemented to avoid repeat*
15 *violations, and provide the department with information that will*
16 *assist in the identification and location of the source or sources*
17 *of the noncompliant brake friction material.*

18 *(g) In enforcing this article, the department shall not recall*
19 *automobiles fitted with brake friction materials that do not comply*
20 *with this article.*

21 *(h) A motor vehicle manufacturer that violates this article shall*
22 *notify the registered owner of the vehicle within six months of*
23 *knowledge of the violation and shall replace, at no cost to the*
24 *owner, the noncompliant brake friction material with brake friction*
25 *material that complies with this article. A motor vehicle*
26 *manufacturer that fails to provide the required notification to*
27 *registered owners of the affected vehicles within six months of*
28 *knowledge of the violation is subject to fines and penalties*
29 *authorized pursuant to subdivision (a).*

30 *25250.64. (a) The Brake Friction Materials Water Pollution*
31 *Fund is hereby established in the State Treasury. All fines and*
32 *penalties collected by the department pursuant to this article shall*
33 *be deposited in the fund.*

34 *(b) The moneys in the fund shall be expended, upon*
35 *appropriation by the Legislature in the annual Budget Act, solely*
36 *for the full implementation of this article by the department.*

37 *25250.66. This article does not limit, supersede, duplicate, or*
38 *otherwise conflict with the authority of the department to fully*
39 *implement Article 14 (commencing with Section 25251), including*
40 *the authority to include products in a product registry established*

1 pursuant to the regulations adopted pursuant to that article or any
2 testing or labeling requirements imposed pursuant to that article
3 if those requirements are more protective of the public health and
4 environment than those prescribed by this article. Notwithstanding
5 subdivision (c) of Section 25257.1, vehicle brake pads shall not
6 be considered as a product category already regulated or subject
7 to pending regulation for purposes of Article 14 (commencing with
8 Section 25251).

9 SEC. 3. No reimbursement is required by this act pursuant to
10 Section 6 of Article XIII B of the California Constitution because
11 the only costs that may be incurred by a local agency or school
12 district will be incurred because this act creates a new crime or
13 infraction, eliminates a crime or infraction, or changes the penalty
14 for a crime or infraction, within the meaning of Section 17556 of
15 the Government Code, or changes the definition of a crime within
16 the meaning of Section 6 of Article XIII B of the California
17 Constitution.

18 ~~SECTION 1. The Legislature finds and declares all of the~~
19 ~~following:~~

20 ~~(a) Friction materials are an essential component of motor~~
21 ~~vehicle brake systems and of critical importance to transportation~~
22 ~~safety and the public safety in general.~~

23 ~~(b) Debris from friction materials containing copper in all of its~~
24 ~~forms, including, but not limited to, elemental copper and all of~~
25 ~~its alloys and compounds, are generated and released to the~~
26 ~~surrounding environment in the course of normal brake system~~
27 ~~operation.~~

28 ~~(c) Tens of thousands of pounds of copper and other substances~~
29 ~~released from brake friction materials enter California's streams,~~
30 ~~rivers, and marine environment every year.~~

31 ~~(d) Copper is toxic to many aquatic organisms, including~~
32 ~~salmon.~~

33 ~~(e) Limits on the copper content of brake friction materials are~~
34 ~~essential for California cities, counties, and industries to comply~~
35 ~~with federal Clean Water Act (33 U.S.C. Sec. 1251 et seq.)~~
36 ~~mandates, including copper water quality standards and copper~~
37 ~~total maximum daily loads in California's urban watersheds.~~

38 ~~(f) Without limits on the copper content of brake friction~~
39 ~~materials, California taxpayers face billions of dollars in federal~~
40 ~~Clean Water Act compliance costs.~~

~~(g) Changes in the composition of brake friction materials made to comply with copper water quality standards and successfully implement copper total maximum daily loads in California's urban watersheds should meet all applicable safety standards.~~

~~SEC. 2. Article 13.5 (commencing with Section 25250.50) is added to Chapter 6.5 of Division 20 of the Health and Safety Code, to read:~~

~~Article 13.5. Motor Vehicle Brake Friction Materials~~

~~25250.50. For purposes of this article, the following definitions apply:~~

~~(a) "Board" means the State Water Resources Control Board.~~

~~(b) "Department" means the Department of Toxic Substances Control.~~

~~(c) "Motor vehicle" has the same meaning as "vehicle" is defined in Section 670 of the Vehicle Code.~~

~~(d) "Testing certification agency" means an agency approved by the department as qualified and equipped for the certification of testing of products, materials, equipment, and installations in accordance with nationally recognized standards.~~

~~25250.52. On and after January 1, 2025, any motor vehicle brake friction materials exceeding 0.5 percent copper by weight shall not be sold in this state.~~

~~25250.54. On and after January 1, 2014, any motor vehicle brake friction materials containing any of the following constituents in an amount that exceeds the following concentrations shall not be sold in this state:~~

~~(a) Cadmium and its compounds: 0.01 percent by weight.~~

~~(b) Chromium(VI)-salts: 0.1 percent by weight.~~

~~(c) Lead and its compounds: 0.1 percent by weight.~~

~~(d) Mercury and its compounds: 0.1 percent by weight.~~

~~(e) Asbestiform fibers: 0.1 percent by weight.~~

~~25250.56. (a) The department shall require vehicle brake manufacturers to comply with the regulations adopted pursuant to subdivision (a) of Section 25253 in their development of brake friction materials. In the process of complying with the regulations adopted pursuant to subdivision (a) of Section 25253, a manufacturer shall give specific consideration to the cumulative~~

1 impacts on health and the environment of alternatives that increase
2 the use of nickel, zinc, and antimony.

3 ~~(b) Prior to the enactment of regulations implementing Section~~
4 ~~25253, a vehicle brake friction material manufacturer shall exercise~~
5 ~~due diligence to ensure that formulations developed to comply~~
6 ~~with Sections 25250.52 and 25250.54 are less harmful to health~~
7 ~~and the environment.~~

8 ~~25250.58. The following motor vehicle classes and brakes are~~
9 ~~exempt from this article:~~

10 ~~(a) Military combat vehicles.~~

11 ~~(b) Vehicles employing internal closed oil immersed brakes, or~~
12 ~~a similar brake system that is fully contained and emits no copper,~~
13 ~~other debris, or fluids under normal operating conditions.~~

14 ~~(c) Brakes designed for the primary purpose of holding the~~
15 ~~vehicle stationary and not designed to be used while the vehicle~~
16 ~~is in motion.~~

17 ~~(d) Motoreycles.~~

18 ~~25250.60. (a) Commencing on January 1, 2014, all~~
19 ~~manufacturers of friction materials used in brakes on new motor~~
20 ~~vehicles, or as replacement parts, that are sold in this state shall~~
21 ~~obtain certification from a third-party testing certification agency~~
22 ~~that each of their formulations for brake friction materials complies~~
23 ~~with Section 25250.54. A certification shall be valid for no more~~
24 ~~than three years. Manufacturers shall mark proof of certification~~
25 ~~on all brake friction materials.~~

26 ~~(b) Commencing on January 1, 2025, all manufacturers of~~
27 ~~friction materials used in brakes on new motor vehicles, or as~~
28 ~~replacement parts, that are sold in this state shall obtain certification~~
29 ~~from a third-party testing certification agency that each of their~~
30 ~~formulations for brake friction materials complies with Sections~~
31 ~~25250.52 and 25250.54. A certification shall be valid for no more~~
32 ~~than three years. Manufacturers shall mark proof of certification~~
33 ~~on all brake friction materials.~~

34 ~~(c) Prior to its products being sold in this state, a manufacturer~~
35 ~~of friction materials used in brakes on new motor vehicles, or as~~
36 ~~replacement parts, shall file a copy of the third-party certification~~
37 ~~of each of its brake friction materials formulations with the~~
38 ~~department. The department shall charge a reasonable filing fee~~
39 ~~upon the filing of a copy.~~

1 ~~(d) Manufacturers of friction materials used for brakes on new~~
2 ~~motor vehicles, or as replacement parts, may obtain certification~~
3 ~~of compliance with the requirements of Section 25250.52 or~~
4 ~~25250.54 at any time prior to the dates specified in those sections.~~

5 ~~(e) The department, in consultation with all interested parties,~~
6 ~~and on or before January 1, 2012, shall develop all certification~~
7 ~~and marking criteria required pursuant to this section.~~

8 ~~(f) Commencing on January 1, 2014, vehicle manufacturers and~~
9 ~~retailers of friction materials shall ensure that only brakes certified~~
10 ~~for sale in this state are offered for sale in this state.~~

11 ~~25250.62. (a) A violation of this article, including, but not~~
12 ~~limited to, offering brake friction materials for sale without first~~
13 ~~complying with subdivision (c) of Section 25250.60 or the~~
14 ~~falsification of third-party certification, by vehicle manufacturers,~~
15 ~~brake friction materials manufacturers, distributors, or retailers,~~
16 ~~shall be subject to a civil fine of up to ten thousand dollars~~
17 ~~(\$10,000) per violation.~~

18 ~~(b) The department shall enforce this article. The department~~
19 ~~shall remove from sale in this state any replacement brake friction~~
20 ~~materials determined to be not in compliance with this article.~~

21 ~~(c) In enforcing this article, the department shall not recall~~
22 ~~automobiles fitted with brake friction materials that do not comply~~
23 ~~with this article, but the department may impose fines and penalties~~
24 ~~authorized pursuant to subdivision (a) on automobile manufacturers~~
25 ~~whose vehicles are fitted with brake friction materials that do not~~
26 ~~comply with this article.~~

27 ~~25250.64. This article does not limit, supersede, duplicate, or~~
28 ~~otherwise conflict with the authority of the department to fully~~
29 ~~implement Article 14 (commencing with Section 25251), including~~
30 ~~the authority to include products in a product registry established~~
31 ~~pursuant to the regulations adopted pursuant to that article or any~~
32 ~~testing or labeling requirements imposed pursuant to that article~~
33 ~~if those requirements are more protective of the public health and~~
34 ~~environment than those prescribed by this article. Notwithstanding~~
35 ~~subdivision (c) of Section 25257.1, vehicle brake pads shall not~~
36 ~~be considered as a product category already regulated or subject~~
37 ~~to pending regulation for purposes of Article 14 (commencing~~
38 ~~with Section 25251).~~

39 ~~SEC. 3. No reimbursement is required by this act pursuant to~~
40 ~~Section 6 of Article XIII B of the California Constitution because~~

1 ~~the only costs that may be incurred by a local agency or school~~
2 ~~district will be incurred because this act creates a new crime or~~
3 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
4 ~~for a crime or infraction, within the meaning of Section 17556 of~~
5 ~~the Government Code, or changes the definition of a crime within~~
6 ~~the meaning of Section 6 of Article XIII B of the California~~
7 ~~Constitution.~~

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